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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,814	04/04/2002	Makoto Uchida	10059-413US (P26104-01)	5588
570	7590	12/15/2005	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			MERCADO, JULIAN A	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/089,814

Applicant(s)

UCHIDA ET AL.

Examiner

Susy N. Tsang-Foster

Art Unit

1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 3 and 4.
Claim(s) rejected: 1 and 2.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The 112, first and second paragraph rejections in the previous office action are overcome in view of applicant's amendment to claim 1 and cancellation of claim 5. Art rejections based on Inoue of record are withdrawn by the Examiner after further consideration since Inoue discloses agglomerates of catalyst particles which are coated with the polymer electrolyte and it is not the individual catalyst particles that are coated with the polymer electrolyte.

Continuation of 11. does NOT place the application in condition for allowance because: With respect to art rejections based on Watanabe, applicant asserts that Watanabe does not disclose or suggest two sets of carbon particles which each have a different electrolyte adsorbed thereon and that there is no teaching or suggestion in Watanabe of two different polymer electrolyte solutions which are adsorbed onto different sets of carbon particles and that in the present invention, the electrolytes themselves are different in size before being applied to the two sets of carbon particles and the electrolyte size is not determined by the carbon particle which is covered. In response, Watanabe does disclose in the first coating step, the amount of the solid polymer electrolyte is such that the support catalysts are completely coated with the electrolyte (col. 4, lines 58-65) and since the carbon fibers and the granular carbon particles are different in size, the size of the solid polymer electrolyte completely covering the carbon fibers and the granular carbon particles would also inherently be different in size. Applicant does not specifically claim that the particle size of the electrolytes are different in size. Applicant only claimed that the size of the electrolytes are different. Applicant only claims particle size of the electrolytes in instant claims 3 and 4. It is noted that the features upon which applicant relies (i.e., the particle size of the polymer electrolyte) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As admitted by applicant on page 6 of the remarks filed on 11/25/2005, Watanabe creates electrolyte-coated support catalyst which are different in size which reads on the electrolyte being different in size as recited in claim 1. Claim 1 does not recite "particle size" of the polymer electrolyte.

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 3 is allowable since the closest prior art of record Watanabe, does not disclose, teach, or suggest the particle size of the first polymer electrolyte as recited in instant claim 3. Claim 4 is allowable since the closest prior art of record Watanabe, does not disclose, teach, or suggest the specific surface areas of the first and second carbon particles and the particle sizes of the first and second polymer electrolytes as recited in instant claim 4.

Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster whose telephone number is (571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**SUSY TSANG-FOSTER
PRIMARY EXAMINER**